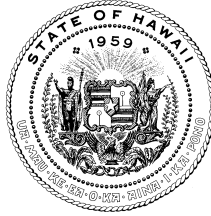


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
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KAPOLEI, HAWAII 96707

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**HAWAII ISLAND BURIAL COUNCIL
MEETING MINUTES**

DATE: THURSDAY, MAY 18, 2006
TIME: 9:00 AM
PLACE: NATURAL ENERGY LABORATORY HAWAII AUTHORITY
73-4660 QUEEN KA'AHUMANU HIGHWAY
KAILUA-KONA, HAWAII

ATTENDANCE:

HIBC MEMBERS: Charles Young, Chair
Ulu Sherlock, Vice-Chair, Hilo
Anna Cariaga, Ka'u
Ron Dela Cruz, Kohala
Leningrad Elarionoff, Kohala
Pele Hanoa, Ka'u
Roger Harris
Roy Helbush
Ku Kahakalau, Hamakua
Kaleo Kualii, Kona
Cynthia Nazara, Kona
Dutchie Saffrey, Puna

Absent: Jacqui Hoover

SHPD Staff: Keola Lindsey, SHPD - History and Culture Branch
Julie Taomia, SHPD - Archaeology Branch

Guests: Debralee Kailiwai-Ray Melitta Hodson
John Kailiwai William Akau
Bob Rechtman Stephanie Laxton
Arthur Mahi Annie Akau
Lehua Kamaka Fred Kauwe
Shanell Subica Olivia Nenio
Norman Keana'aina Nani Langridge
Brenda Ford Ruby McDonald
Curtis Tyler Iwalani Arakaki

Marian Channels
Juana Pi'iali'i
Gail Byrne
Michelle Orita
Kapua Kane-Huihui
Jean Rasor
David Frankle
Randy Vitousek

Mike Issacs
Theresa Perez
Paul Kay
John Roberts
Tom Wolforth
Hannah Reeves
Luna Kanawai Hauani'o

I. OPENING REMARKS

The HIBC Chair, Charles Young (Young), called the meeting to order at 9:16 am.

Kupuna Pele Hanoa offered a pule.

The HIBC members and SHPD staff introduced themselves to the community members in attendance.

II. APPROVAL OF THE APRIL 20, 2006 HIBC MEETING MINUTES

A motion was made to approve the April 20, 2006 HIBC meeting minutes. (Sherlock.Hanoa)

Vote: All in Favor

III. BUSINESS

A. LINEAL DESCENT CLAIM TO BURIALS WITHIN SIHP SITE 18495

PU'U LANI RANCH PHASE II DEVELOPMENT

PU'UANAHULU AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND

TMK (3) 7-1-006:115 AND (3) 7-1-006:116

Information/Recommendation/Determination: Discussion and testimony of the history of Site 18495. Department recommendation to the Hawaii'i Island Burial Council (HIBC) whether to recognize the applicant as a lineal descendant to identified individuals buried within Site 18495. HIBC determination to recognize the applicant as a lineal descendant to the subject burials.

Keola Lindsey (Lindsey) referred the HIBC to a May 10, 2006 staff memorandum recommending that the HIBC recognize Ms. Kailiwai-Ray as a lineal descendant to the two known burials within Site 18495.

Lindsey said background information regarding Site 18495 was included in the May HIBC mail out. Ms. Kailiwai-Ray provided a description of the site to the Department in the early 1990's and those early memorandums were also included in the mail out. As time elapsed, two separate landowners were required to submit burial treatment plans (BTP) for Site 18495 due to lot lines within Pu'ulani Ranch dividing the site through the middle. In 2004 the landowners submitted BTPs that included the description of the site leading to the HIBC determination of preserving the burials in place in June 2004. There have been significant amounts of testimonies from the families of Pu'uanahulu regarding burials within the general area and specifically Site 18495. The Department has accepted the description of the site. The next step of the process was to review Ms. Kailiwai-Ray's

genealogy information which the Department has confirmed her collateral lineal connection to the two individuals buried within the site.

Debralee Kailiwai-Ray (Kailiwai-Ray) informed everyone that on January 8, 1993 she completed a burial registration form with the State Historic Preservation- Burials Program on O'ahu with Kana'i Kapeliela who was the former SHPD cultural specialist. Kailiwai Ray said she submitted certified birth and death certificates and oral history to support her lineal descendancy to these burials over 13 years ago. According to the SHPD documents she is recognized as a cultural descendant and not a lineal descendant. Kailiwai-Ray said she resubmitted her two lineal claims on February 23, 2006 to Melanie Chinen. Kailiwai-Ray said she received a May, 8, 2006 letter from the SHPD stating that the DLNR will provide a favorable recommendation to the HIBC to recognize her as a lineal descendant. This is only one of two lineal descendancy claims she has filed.

The second lineal claim consists of burials located partially on TMK (3)7-1-005:001 and an adjacent property in Pu'ulani Ranch, Phase I. These burials are part of a family cemetery on land once occupied by Mai Kaha'ikupuna or Ailuene since 1884. This information is noted in Volume I- Pu'uanahulu and Pu'uwa'awa'a Historical Documentary by Kepa Maly dated July 7, 1999 and found in the Hawai'i State Archives Series, DLNR 2-24. Mai Kaha'ikupuna is Kailiwai-Ray's great-great maternal grandparent or her grandfather Nelson Ha'o's maternal grandparents. It is noted through oral testimony from Nelson Ha'o to John Kailiwai that Ha'o's father is buried in this family cemetery on land previously owned and occupied by Hao's maternal grandmother Mai and Uncle John Kaha'ikupuna. It was a 1990 visit by Ha'o and Kailiwai that noticed disturbance had taken place at the family cemetery. The iron pipe enclosure surrounding the cemetery and the rock markers identifying the graves were removed. Ha'o could not find his father's grave. An archaeological inventory survey (AIS) was prepared by Archaeological Consultants of the Pacific in January 2006. Kailiwai-Ray said none of the testimony she provided in her testimony on the family cemetery is included in the AIS. Kailiwai-Ray said neither her nor her father, John Kailiwai were interviewed for the AIS.

Kailiwai-Ray said she believes her claim as a lineal descendant on both applications filed on February 23, 2006 are legitimate and a favorable recommendation should be considered today on her second claim also. It is long overdue.

Lindsey said there is a staff recommendation today for the lineal claim on TMK (3) 7-1-006:115 and 116.

Young asked if this is one of two claims made back in 1993.

Lindsey said they were resubmitted in February 2006.

Young said there have been cultural descendancy recognitions.

Lindsey said there is a list with quite a few individuals recognized in 2004. The complete list is attached to the BTPs which were included in the mail out.

The second lineal claim on TMK (3)7-1-005:001 is still under review.

Dutchie Saffrey (Saffrey) said it has taken 13 years to get a recommendation on one of the two. Saffrey asked why both could not be addressed at the same time.

Lindsey said the history and information related to Site 18495 is very clear and consistent. From the Department's perspective, the second claim is more problematic. It is unclear exactly where this site is. There has been a recent AIS on TMK (3) 7-1-005:001, but it appears all of the informant testimony was not included. The Department is trying to clear that issue up with both the families and the consultant.

Hanoa said this case has been going on for a while. It is a shame that this is taking so long. There were meetings and site visits in Pu'uana'hulu. This is uncalled for. This thing needs to get done.

Young asked if the Council has determined to preserve both sites in place.

Lindsey said the burials on TMK (3)7-1-005:001 have never been addressed.

Kailiwai-Ray said she did fill out a burial registration form.

Young asked if the site has been disturbed.

Kailiwai-Ray said Marc Smith of the SHPD came up in 2002 because there was a D-9 bulldozer up there. It looked like the bulldozer just did surface work clearing the trees. Kailiwai-Ray said Smith did find bone remnants in that area.

Saffrey asked Lindsey if this matter is going to be reviewed and handled expeditiously. It has been 13 years. Saffrey asked if this will be on the June 2006 HIBC agenda.

Lindsey agreed that a lot of time has passed. The Department is reviewing the second claim and the goal is to have a recommendation prepared for the HIBC by June 2006.

Saffrey said her heart goes out to Kailiwai-Ray. They are finding their bones up there.

Lindsey said in addition to the descendency reviews, the Department is also reviewing the history of other sites within the development.

Young asked if the Council can make a determination on the second claim now.

Lindsey said the Department usually provides a recommendation to the HIBC first. Lindsey requested that the HIBC and Kailiwai-Ray wait until the June meeting for the second claim to be cleared up and for the Department to provide a recommendation and the background history on the site.

Young said the two concerns are the lineal claim and also the protection of the site. The HIBC has not made a determination yet.

Lindsey said Kailiwai-Ray has submitted the registration and the Department has notified the landowner of the presence of burials on the TMK parcel. The HIBC has not made a determination because the landowner has not submitted a BTP.

Hanoa asked if the graves have been destroyed.

Kailiwai-Ray said Marc Smith did find finger bones in 2002.

A motion was made to recognize Ms. Debralee Kailiwai-Ray as a lineal descendant to the known burials within Site 18495 located on TMK (3)7-1-006:115 and (3)7-1-006:116. (Kahakalau/Hanoa)

Vote: All in Favor

Kaleo Kualii'i (Kualii'i) asked if the boundaries of the site on TMK (3) 7-1-005:001 have been identified.

Lindsey said the families and SHPD staff have been out to the area multiple times.

Kualii'i asked if this is by the old house.

Kailiwai-Ray said no, this site is on the south end of Pu'ulani Ranch.

Ulu Sherlock (Sherlock) said she remembered at one meeting in Pu'uanahulu, the County had some officials there. There was some discussion on future permits that were submitted for the entire area. The HIBC requested that no more permits be processed until the issues were cleared up. Sherlock asked on the status of permits.

Lindsey said since that time permits have continued to be reviewed and approved. Specific lots that have known burials on them have been "flagged". Individual lot owners have come in with BTPs in order to move forward with their permitting process. There is the larger issue of why a comprehensive BTP was never done for the entire development which appears to be a condition of the original subdivision for the project.

Kailiwai-Ray said there is now a proposed Pu'ulani Ranch, Phase III and there is an AIS.

Young asked if Kailiwai-Ray has been consulted.

Kailiwai-Ray answered no.

Kualii'i asked if other families are being consulted.

Kailiwai-Ray said one family member gets the report and makes copies and then distributes them to the rest of the family.

Kualii'i said that individual lot owners are coming in with their own BTPs. Kualii'i asked if that means the developer is not responsible anymore for the BTP and AIS.

Lindsey said an overall BTP for the project was never submitted. The AIS is approved. The individual lot owners are coming with BTPs because neither the County or the State will approve a permit until the burial issues on a given lot are addressed.

Young said the developer has failed to meet the requirements of his subdivision approval. Young said he does not know if the developer has been held responsible for that.

Leningrad Elarionoff (Elarionoff) said if that is fact, the HIBC should be writing to the Planning Director to look into the matter and enforce the rules.

Ruby McDonald (McDonald) said there is an issue in Pu'ulani Ranch before the County Board of Appeals. A site that was designated for preservation was destroyed. The lot owner then went in for a building permit and was denied. The Planning Director is well aware of the problems in Pu'ulani Ranch.

Kuali'i said it appears the developer has dumped the responsibilities on the lot owners. Kuali'i said he feels for the families. Kuali'i asked if waiting 30 more days is ok with the family.

Kailiwai-Ray said her frustration is that the family has to police the area. When the D-9 came up, her dad had to run up and stop them because of the burials. There is no closure. Kailiwai-Ray does not feel her tutu left these things to be wide open like this. The family gets burned out. It is very frustrating. Her dad is always asking her where these things are going. The goal is to bring closure and rest for her tutu. It has been 13 years, her oldest son is graduating this year, and he was not even in elementary school when it all started. Kailiwai-Ray said she is not here to scold anybody, but needs to be met halfway because it has been going on forever.

Young said the issue needs to be comprehensive or the families and the council will continue to deal with the issues one by one as they come up.

Kailiwai-Ray said there is an AIS for Phase III.

Kuali'i asked if all of the burials were identified.

Kailiwai-Ray answered no. She and her dad were not informants in the AIS. Only a few families met with the consultant. There are more informants.

Kuali'i said all of the informants need to meet with the consultants and the SHPD and walk the land and identify all of the sites.

Kailiwai-Ray said the problem they have is with the boundaries of the cemetery. There are still some landmarks that her dad knows. There are at least 15 graves in the cemetery. Someone needs to establish the boundaries.

Lindsey says the Department's issue with the AIS on TMK (3) 7-1-005:001 is that the description of the burial site within the AIS is not consistent with the description provided to the Department by the families. The consultant that submitted the AIS is not here today to explain their side of the situation, but ideally the consultant and the families should be in agreement with what is described in the AIS.

Young said the HIBC should review a comprehensive set of information on all of the burials within Pu'ulani Ranch- especially within Phase III.

Lindsey said the goal for June is to clarify any discrepancies in the description of the burial site identified in the AIS for TMK (3)7-1-005:001. This will assist the Department in our review of the lineal claim. Incorrect information should not be in an approved AIS.

Elarionoff said the correct information must be in the AIS, it should not be up to the families to fix it. The families submit information to the Department, and the Department needs to make sure it is

correctly stated in the AIS. For the overall subdivision approval, the developer needs to be in compliance, or the County needs to shut him down.

Young said he would like the Council to write a letter to the Council and the State, but wants it to be specific. Young feels the County needs to do a little more to enforce the conditions of subdivision approval.

The second lineal claim will be addressed at the June 2006 HIBC meeting. There is also the issue of Phase III.

Saffrey asked Kailiwai-Ray if she is ok with waiting 30 days.

Saffrey said the State has shortchanged the HIBC by keeping the SHPD understaffed. Saffrey does not believe anything will be resolved in 30 days.

Kailiwai-Ray said she is not willing to wait.

Saffrey said recognition as a lineal descendant gives you more power to stop disturbance in the area as opposed to a cultural recognition.

Anna Cariaga (Cariaga) asked if Kailiwai-Ray needs to prove she is a lineal descendant.

Young said she already has.

Cariaga asked Kailiwai-Ray what she wants the HIBC to do.

Kailiwai-Ray said the AIS approval for TMK (3)7-1-005:001 and Phase III needs to be put on hold until all of these issues can be cleared up.

Sherlock said the County and the State need to work with the families and the developer to clear this up.

Young said the second lineal claim is not on the agenda and he is concerned about that.

Kuali'i asked Lindsey what he needs to complete the review on the second lineal claim.

Lindsey said the Department needs to work with the families and the consultant to identify the exact location of the site. The descriptions from the two sides are not matching up. The genealogy is very clear. The Department has to work with the families to get the testimony about the site and who is buried there. The families may have given that information to the Department and the consultant already, but there is still some discrepancies from the Department's perspective. The Department needs to work with the families to clear it up.

Elarionoff said if Lindsey and Department think that they can clear the lineal issue up within 30 days, the HIBC should wait until the June meeting and see what the Department can come up with.

Kahakalau said that since the second lineal claim is not on the agenda, even if the HIBC votes on a motion, legally it may not stand. That issue has come up before. Kahakalau said if she is hearing

Kailiwai-Ray correctly, no more BTPs should be coming to the HIBC, because we don't want the clock to start until the information is correct and all the sites are identified.

Lindsey said that because the AIS for TMK (3)7-1-005:001 is not approved, a BTP cannot be submitted, although Lindsey said he thinks there is a draft BTP for that parcel. The primary concern is getting the burial description consistent.

The other general concerns are the lack of a comprehensive BTP for Phase II of the development and ensuring we don't have a repeat of these problems in Phase III.

Curtis Tyler (Tyler) said in his opinion the system is being abused to the maximum. These families have been coming here expressing their concerns for years. Tyler is surprised that these families can still be so gracious. These people have had their ilina and iwi kupuna desecrated time and time again. This needs to stop.

This Council has already asked the Planning Director to come to a meeting. The Planning Director sent Daryn Arai. The County has a responsibility to this Council, the iwi kupuna and to these families.

The developer has filed an appeal with the County over the denial of a building permit on a lot where a site was destroyed. Tyler is not sure of all the details.

Tyler said if ever there was a family that deserves lineal recognition, it is these families. The matter of recognizing lineal descendants is on the agenda. These pilikia need to stop. Tyler recommended that a letter be written to the County of Hawai'i Planning Director urging him to deny any permit for land alteration activities on any lot and any phase of the Pu'ulani Ranch Subdivision until such time that comprehensive BTP has been prepared, submitted and approved. It is time to stop this hewa. The letter also needs to be sent to Governor Lingle, DLNR Chair Peter Young and SHPD Administrator Melanie Chinen.

Tyler told these families that he would be pilipa'a with them. All the conditions of subdivision approval have not been met. That is not pono and the developer continues to move forward.

Young asked if the County can revoke the subdivision approval.

Tyler said it would be helpful if Chris Yuen came before the Council. Yuen is the Planning Director. Tyler said he is not an attorney, but if the conditions of a subdivision approval have not been met and have not been waived, then the developer is in violation of the law. It is time for action to make sure these families' rights are protected. The families are not being treated equally and fairly under the law and it is atrocious. Tyler does not know how this can go on year after year. The families have been engaged in this process, telling us where their burials are for years.

Saffrey thanked Tyler for clarifying that lineal recognition is on the agenda.

Young clarified that Kailiwai-Ray's second lineal claim is to a site that is not on the agenda.

Tyler said that may be grounds for deferring action, but these families have undoubtedly demonstrated their lineal connection to these lands.

Young agreed.

Lunakanawai Hauani'o (Hauani'o) agreed with Tyler's testimony. It should be a priority that no clocks start until the issues are resolved. The agenda says Phase II of the project, but it is cumulative. The recommendations should address the entire project.

McDonald said the Board of Appeals transcript for the appeal of the Planning Director's denial of a building permit is dated February 10, 2006. At the end, the Board does not have jurisdiction because the Planning Director's decision was not final. The landowner said if the County denies the permit, the County owns the property so they should pay for it. That is arrogant.

During the last meeting in Pu'unanahulu, when the County attended, it poured rain and the place turned black. That is a sign. The developer did not do what was supposed to be done. The County was supposed to get back to the HIBC on how the County and HIBC were to work together to come to some sort of resolution. The HIBC recommended that any plan was to be reviewed by the families. That was not just for burials. The County was supposed to get back on how that was going to work.

McDonald said that this has been going on for too long.

Kuali'i requested a copy of the February 10, 2006 Board of Appeals transcript.

Norman Keana'aina (Keana'aina) asked Lindsey to explain who the State of Hawai'i is. If Lindsey can't answer Keana'aina wants it in writing.

Keana'aina said Kailiwai-Ray is his 'ohana. This is a very disturbing situation. The State and County officials including Lindsey will be summoned to Court on June 8th for all the kolohe they have been doing. The State needs to know they are talking to an ali'i and someone they cannot push around. Keana'aina said he is a direct descendant of Kamehameha I. The State of Hawai'i is a de facto State. We are all ali'i. Keana'aina said the State is using the HIBC like a puppet. The guidelines the State gave the HIBC are kapulu, just like the guidelines the State gave him when he was a teacher at Konawaena. The HIBC needs to run on the laws that were vested to the people and supersede State law.

Hannah Reeves (Reeves) said the SHPD has her genealogy. There are many lineal descendants. Reeves said Kailiwai-Ray is a lineal descendant.

A motion was made to authorize the HIBC Chair to send a letter to the County of Hawai'i Planning Director Christopher Yuen strongly urging him to deny any permit on any lot within any phase of the Pu'ulani Ranch Development until the conditions of subdivision approval are met and for Yuen to work with the HIBC by coming to the next HIBC meeting to resolve on-going issues which are causing hardships on the families of Pu'uanahulu. A copy of this letter will be sent to SHPD Administrator Melanie Chinen, DLNR Chair Peter Young, Governor Lingle and OHA. (Kahakalau/Hanoa)

Vote: All in Favor

A motion was made to authorize the HIBC Chair to send a letter to DLNR Peter Young requesting him to immediately authorize resources to expedite the review of descendant claims,

specifically those in Pu'uanahulu and that no burial treatment plans for Pu'ulani Ranch be presented to the HIBC until all issues in Pu'ulani Ranch are resolved. A copy of this letter will be sent to Hawai'i County Planning Director Christopher Yuen, SHPD Administrator Melanie Chinen, Governor Lingle and OHA. (Kahakalau/Cariaga)

Vote: All in Favor

Saffrey said she is concerned about Kailiwai-Ray's second lineal claim. Saffrey said there is no Attorney General at the meeting to advise the Council. Saffrey wanted it in the meeting minutes that the absence of the Attorney General hampers the HIBC's ability as a board.

Sherlock said that it was announced at the beginning of the meeting that there was no Attorney General.

Saffrey said Kailiwai-Ray has been waiting for 13 years. There have been bones desecrated. Saffrey wants to support the families, but there is nobody to advise the Council how to do that.

Lindsey said the agenda item is specific to two TMK and Site 18495. The Council action in that regard has been duly noticed and the landowners have been notified.

Young said the Attorney General notified the SHPD a few days ago that there will not be representation at this meeting, it was not a no show kind of a thing. The Attorney General has reminded the HIBC to stick to what actions the agenda states will occur. Any actions that take place outside of what is on the agenda are likely to be kicked back.

Saffrey said if it were her choice, no Attorney General would mean no meeting.

Kahakalau said the HIBC cannot take action on an item that is not on the agenda. What the HIBC can do is make sure it is on next month's agenda.

Young said that he would like a broader discussion on the Pu'ulani Ranch Development at the next meeting. That is going to take getting background information from staff.

A motion was made that Debralee Kailiwai-Ray's lineal descent claim to burials on TMK (3) 7-1-005:001 is on the June 2006 HIBC agenda for action (Saffrey/Cariaga)

Vote: All in Favor

Young said he would like the discussion of the overall status of the Development on the June 2006 HIBC agenda.

A motion was made to close agenda item III.A. (Sherlock/Hanoa)

Vote: All in Favor

**B. BURIAL TREATMENT PLAN FOR THE KALOKO HEIGHTS PROJECT
KALOKO AND KOHANA'IKI AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND
TMK (3) 7-3-009:032**

Information/Recommendation/Determination: Discussion of the burial treatment plan. Department recommendations to the HIBC whether to recognize applicants as cultural descendants to burials within the project area. HIBC determination to recognize applicants as cultural descendants to burials within the project area. HIBC determination to preserve in place or relocate the burials within the project area. HIBC recommendations to the Department on the short and long term preservation and protective measures detailed in the burial treatment plan.

Lindsey referred the HIBC to a memorandum dated May 10, 2006 which is a staff recommendation that the HIBC recognize the following applicants as cultural descendants to unidentified burials within the Kaloko Heights Project area:

1. Ruby P. McDonald
2. Iwalani Arakaki
3. Marian Channels
4. Olivia Nenio
5. Karen Lilinoe

Kahakalau asked Lindsey if any of the applicants applied for lineal descendency.

Lindsey said it is his understanding that some of the applicants feel they are lineal descendants, but Lindsey did not see any information during his review that confirmed that connection.

Olivia Nenio (Nenio) said she is a lineal descendant, not cultural.

Marian Channels (Channels) said she does not accept the cultural recommendation, she is lineal.

Young asked Lindsey if the cultural recommendation is based on what he has reviewed so far and that there is nothing as of yet that makes that a lineal recommendation.

Lindsey said a critical piece of information in reviewing as lineal claim is specifically identifying the individual within a burial site. Lindsey said during his review, he did not see any of the individuals within the burials within this project area specifically identified.

Elarionoff asked whose testimony has more weight, a lineal or a cultural descendant.

Lindsey said a cultural recognition is broad, where as a lineal has shown their direct connection to the burial. A lineal is speaking on behalf of an identified family.

Elarionoff asked if there is cultural and lineal descendants speaking on an issue, whose testimony should the HIBC give more weight to.

Lindsey said in most cases the lineal.

Elarionoff asked if all the descendants are cultural, is their testimony still given consideration as if they were speaking of a known family. Elarionoff asked Lindsey to answer true or false.

Lindsey said true.

Kahakalau asked Nenio and Channels if they can specifically identify any of the burials in the area.

Channels said she believes her 'ohana is there, but can't specifically point to where they are.

Nenio said her tutu is buried in Kaloko, but does not know exactly where.

A motion was made to accept staff's recommendation and to recognize the applicants as cultural descendants to unidentified burials within the Kaloko Heights project area. (Kahakalau/Sherlock)

Vote: All in Favor

Lindsey said nothing prevents additional information being submitted that will verify a lineal claim.

Kahakalau said they need to find someone who can identify the people in the graves by name.

Lindsey said the statutory 45 day time frame for the HIBC to render a determination on preservation in place or relocation of the burials within the Kaloko Heights project area begins today.

Paul Kay (Kay) of Stanford Carr Development and Kaloko Heights Associates introduced himself to the HIBC.

Tom Wolforth (Wolforth) of Scientific Consulting Services introduced himself to the HIBC. Wolforth said he has revised the BTP since the last HIBC meeting. The revised BTP has gone out to the people that he is consulting with (page 8 of the BTP)

Wolforth said Mahealani Pai (Pai) wanted Wolforth to mention that Pai is available for any cultural protocol.

Wolforth said a woman who could not be here today wanted Wolforth to mention that she prefers not to have a stone wall around the burials.

Wolforth said three things were changed in the revised plan. Wolforth said he took out the discussion on mullet. At the last meeting, two maps were shown. Wolforth said he had seen those maps several years ago during his background research on the project prior to going out into the field. Those maps are available at the University of Hawai'i-Hilo. The third thing is the discussion on whether rock walls or a ti-leaf planting should delineate the buffers around the burials.

Elarionoff referred to the first two pages of the BTP (unnumbered). Elarionoff said the revised BTP references consultations between March 2005 and February 2006 with 18 individuals whether rock walls should be constructed around the burials and that several people said the walls can be distracting. Elarionoff wanted to know who the several people are.

The BTP says that only one person responded to a request to comment on a draft BTP explaining that ti would delineate the buffer boundaries. Elarionoff wanted to know what happened to the rest of the people being consulted and who the one person is.

The BTP says “ancient native Hawaiian burials rarely used walls to mark or surround burial areas”. Elarionoff said to an extent that is correct, but they did use platforms. The BTP says “Low stone walls do not prohibit people from moving beyond them.” Elarionoff said neither will a ti leaf planting. The BTP says “walls call attention to these places that were not called attention to before, and many would not like to call attention to them now.” Elarionoff understands this sentence, but on the site visit saw only one ti leaf plant and thinks a planting of ti leaf will call more attention to the area than a rock wall would. The BTP says “Stone walls detract from the natural and original setting of the place.” Elarionoff said the whole property is full of rocks and does not see how a rock wall will detract because the rock is much more natural in the area than ti leaf.

The BTP says that at the April HIBC meeting, a HIBC member recommended enhancing the ti leaf planting and that recommendation was incorporated into the BTP. Elarionoff said that he made a recommendation for a rock wall at the April meeting which was totally disregarded.

Elarionoff referred to several points in the BTP which conclude that a ti leaf planting is the appropriate way to delineate the boundaries of the burials. One of those points is “the strong protective powers of ti.” Elarionoff asked Wolforth if he really believed that.

Wolforth said he does, but probably not in a way that most people in the room do.

Elarionoff said if Wolforth did not believe that, he would say Wolforth is mocking us. There is a cave on the property that has a ti plant and Wolforth went into the cave anyway, so in a way, Wolforth does not believe that.

Wolforth said it is not a physical barrier, it is a physic barrier, a spiritual barrier. Wolforth does the best he can to get himself in the right mind. He sees that marker, it is telling him something, it is reminding him of something. Wolforth does the best he can to get in the right physic, spiritual and emotional place when he crosses that physical barrier.

Elarionoff said the indication is that the ti is a spiritual barrier. Elarionoff said he is not worried about the spirits; he is worried about the thieves who go into these places and destroy them. Elarionoff believes the barrier says you, physical man stop there.

Elarionoff said leave spiritual issues out of the justifications that Wolforth came up with. If the cultural descendants decide on a rock wall or ti leaf, Elarionoff will not interfere because that would be maha’oi.

Wolforth said the reason he did not list who was for and against the rock walls is that it is a very delicate thing when people disagree. Wolforth is not the one to make the decision and has tried to present the options. It is not a matter of voting on it. Many people did not address the issue during the consultations. Wolforth made it a point not to play one side against the other.

Elarionoff said he has made comments that people do not agree with, but we have to look each other in the eye and say we disagree but respect each other. Elarionoff said he does not want Wolforth rewriting Hawaiian history and have others quote Wolforth later on things that are not true. Elarionoff said he has lived the culture, he did not read it.

Kay said he does not have Wolforth's academic expertise or the cultural background many in the room have. Kay said he looks to the people who have the connections to these burials. The idea is to do things that are permanent and least intrusive. Plants can be taken out. Kay said they are trying to do what the descendants want. Kay thinks they heard from enough people who said ti is the way to go. If the HIBC or descendants want walls, there will be walls.

Cariaga said if there are so many rocks around, they should be used. Maybe walls are the way to go. Cariaga said she was brought up in the old ways, and knows that ti was used for many reasons. Cariaga asked what the families want.

Kay said it has been difficult because nobody can specifically identify who or what families are specifically connected to the burials, and people have been honest about that. It is up to the descendants. If they are told they need walls, there will be walls.

Nazara asked the reason why there is not a break down of what descendants wanted the walls and who did not want them. Nazara asked if it was because Wolforth did not want to clash them together.

Wolforth said the plan developed over a several month period. In no case did he talk to one person about what others wanted.

Nazara asked if there is a consensus.

Wolforth answered no.

Nazara said if she was one of the descendants, she would want to know who disagreed with her so they could come to the table and talk. That is how we do it. Nazara does not think Wolforth would be lining people up against to each other. Whether people believe it or not, Hawaiians know how to come to the table and talk. In regards to the term psychic, the more appropriate term may be a way of life. Psychic is a western thing, for the Hawaiian people it is a way of life that we know is there.

Hanoa asked if the area was pahoehoe.

Kay said there is a lot of pahoehoe, some a'a and a bulldozed area. It is a mix.

Hanoa said if it is pahoehoe, a rock wall would be good. In some places, they cannot go down for the burials, there is no dirt so they build up with the rock.

Nazara said what we are looking for here is respect. If there are ti, people may take them home and use it. They are not going to take the rocks.

Wolforth said the interesting thing about this area is that there are the burials, but it was also an area of agriculture. The majority of the features are kuaiwi and planting mounds. It was very exciting to see the level and intensity of agriculture in this area because of how dry it is. The area is just on the cusp of sustaining agriculture. That is one thing you come away with after spending time on the land.

Kahakalau said when you do consultations; it would be advantageous to discuss certain issues. What type of perimeter delineation will there be? Will there be signs? List who you are consulting

with and their connection to the place. Are they a cultural person in general or a descendant of the area? Do not just try and convince a primarily Hawaiian council of the mana of our own things. We can figure that out ourselves. An example is the idea that plants can be easily removed. As a person that believes the ki is a kinolau of an akua, Kahakalau would strongly object to that statement. That is how we think. The kuleana for Kay and Wolforth is to show specific data on the consultations. Show the people's mana'o, a break down of what they want.

Kahakalau referred to page 10 of the BTP. Kahakalau said her feeling after reading this is that there could be more burials given the nature of the land, especially since our people do not mark their burials. Kahakalau wanted to get a sense from Wolforth if he believes there are more burials in this area.

Wolforth said the simple answer is yes. Regarding consultations, Wolforth asked Kahakalau if she would like to see a person by person breakdown.

Kahakalau said if you are going to ask those questions, she thinks it would be good, so the council does not have to ask them the same questions. The conclusions Wolforth comes to may be based on consultations, but Kahakalau is not seeing that in the BTP. If we are going to use numbers and data, we need to use them in a consistent way. Kahakalau said she is not a number person, but if we are going to go there, it would help to clarify the wishes of the people and make better use of the data you acquire.

Wolforth said his role in this is limited, but he will try his best.

Nazara said the input from people of that area, that ahupua'a take precedence over everyone else.

Saffrey referred to page 8 of the BTP. There is a list of 28 individuals who have been consulted. Of those, 5 have come forward to be recognized as cultural descendants. The role of the HIBC is to hear the descendants, and make judgments on their behalf. Saffrey would be interested to hear what the cultural descendants think about ti leaf versus a stone wall.

Saffrey understands that Wolforth needs to go into the caves. Saffrey appreciates that Wolforth has taken the time to do the research since he is not of the land.

Elarionoff said if the land was going to be preserved as it is, he would say put the ti leaf, but it is going to be a subdivision.

Young said many BTP's have factual contents within them that the HIBC has to make decisions on and many are like a sales document. They are meant to influence our decisions, which Young takes umbrage to, like "stone walls detract from the natural and original setting of the place." Young asked what is 750 houses going to do that a stone wall is not going to do. Young said the BTP gives a lot of history of the land, but it is not telling what is going to happen in the future. Young looks at this and thinks that we are talking about the wrong stuff. It is disturbing enough that we are going to see 750 units there in such a small area, but it is unavoidable. Young said we have to afford more protection than we are talking about in terms of the stone wall. Young is talking about having this whole thing approved in the first place. Young asked Kay to confirm they received subdivision approval years ago.

Kay said all of the zoning is in place.

Young said preserving the burial in place is very easy, the rest of it is very difficult. When the HIBC went on the land, when you picture what is going to be left once they clear the land and picture ti leaf, it will be an excellent landscape, but will not provide the protection for the kind of density we are talking about. Young said that is his mana'o.

Kuali'i referred to page 9 of the BTP. Kuali'i asked if all the materials removed during excavations will be returned.

Kay answered yes.

Kuali'i thanked Kay and Wolforth for that.

Kuali'i said that a total of 39 caves were identified and 5 contained kupuna iwi.

Wolforth said so far.

Kuali'i said it appears that the sites are not being treated individually within the BTP, but rather being treated with a blanket coverage. Kuali'i said each site may have certain issues that must be addressed. It is up to the families of this area. We need more input from them.

Kuali'i asked if there will be archaeological monitors present during the grading.

Kay answered yes.

Kuali'i asked how many. Will there be one per machine.

Kay said they have not gotten into that yet.

Kuali'i said he feels that the 50 foot interim buffers around the sites are inadequate. Kuali'i recommended 75 feet. Kuali'i would also like a monitoring plan incorporated into the BTP. Once the heavy machinery starts, one accident means we could lose something. It will not be the machine operators fault. Kuali'i wanted clarification on how many monitors will be present.

Kuali'i is concerned about inadvertent burials. Page 26 of the BTP states "Depending on design elements, the status of development and construction elements, preservation in place may not be feasible." Kuali'i said we are talking about one of our most sacred things, the kupuna iwi. The idea is to respect our kupuna. Kuali'i said he is very concerned about monitors. Kuali'i asked if there will be blasting with dynamite on the project.

Kay answered he has no idea at this point.

Kuali'i said if there will be dynamite blasting, there should be a 200-300 foot buffer from all sites. People may think this is going overboard, but if you have ever been near a site or in a cave when there is blasting, you know. Kuali'i summarized his concerns. Inadvertents, construction buffers, monitors and blasting buffers. We just want to respect our kupuna. Kuali'i thanked Kay and Wolforth for the proposal in the BTP to return the items removed from the project.

Kahakalau referred to page 14 of the BTP. There is a map of Site 10717 which is a cave. Kahakalau said that the HIBC has always treated the entire cave as the site when there are burials.

Kahakalau said it appears that the drawing ends and the cave continues and that a buffer was arbitrarily established.

Wolforth said caves are very difficult places to be inside. He has been in a number of caves on Hawai'i Island. Wolforth has always asked the same question. Why does the cave map keep going but someone did not go there. It occurred to him that they are not doing a very good job on conveying that information. Wolforth has been in caves where he has looked at his colleagues work, and the cave did keep going, it just was not mapped in. Wolforth said he presented this issue to the Society of Hawaiian Archaeology in 2005, and said we need to do better and systematic and identify ways to be consistent and thorough.

Wolforth said he shows on the map of Site 10717 that the cave continues in four places, but those places are very small. In one area the cave passage continues, but is only 10 centimeters or four inches high. A person cannot get past that. Wolforth says he draws the line at 28 centimeters, which is just under a foot.

Kahakalau referred to page 20 of the BTP. Site 10736 is being listed as a heiau. Kahakalau said that the proposed 50 foot buffer around the "front" of the heiau is not enough. At a minimum, the permanent buffer should be significantly larger and extended to a minimum of 100 feet around the site.

Kuali'i asked if there has been discussion on how the caves will be sealed.

Sherlock said the proposal is to permanently seal the caves. A ten foot "no build" buffer has also been added around the sites in addition to the permanent buffer.

Nazara said page 9 of the BTP addresses sealing the caves.

Kuali'i asked if the descendants have been consulted on sealing the caves.

Wolforth said during the site visit, yes.

Kuali'i said he is still concerned. Dry stacked and even in some cases sealing the cave with concrete does not stop these people from getting in, especially when there are artifacts.

Young asked Lindsey if there is a checklist of what should be in a BTP.

Lindsey said §13-300-33 of the Hawai'i Administrative Rules provide the minimum components of a BTP. Lindsey said before a BTP even reaches the HIBC, SHPD staff is required to review the BTP to ensure it is in compliance with the HAR.

Kahakalau asked if there are pending descendency claims.

Lindsey answered no.

Jean Rasor (Rasor) said at last month's meeting they provided additional names that are associated to that land. Rasor asked if there was an additional notification to those people affording them the opportunity to come forward. Rasor said he has not seen anything in the newspaper.

The HIBC meeting is recessed for lunch at 1:06 p.m.

The HIBC meeting is reconvened at 1:44p.m.

Anna Cariaga left the meeting during the lunch break. Quorum is maintained.

Norman Keana'aina (Keana'aina) asked who has more rights to this property, the owner or the lineal and cultural descendants.

Sherlock said at last month's meeting the Attorney General advised the HIBC that the HIBC does not determine landownership. The HIBC's kuleana is to address the recommendations of the descendants and make sure they are heard by recommending back to the Department what needs to be done.

Hanoa said she is here to malama na iwi kupuna. To malama and protect.

Keana'aina said he is all three, the landowner, a lineal and a cultural descendant. His deed goes back to March of 1900. Keana'aina said the BTP only shows six burials. Keana'aina said he is with Ne'e Papa Aupni Hawai'i. Keana'aina said he sent his people out to do a field check to see what is going on here. There are plenty more burials. The bulldozers should not be on the property. This area should not be touched.

Roger Harris arrived at 1:51 p.m.

Shanell Subica (Subica) and Lehua Kamaka (Kamaka) introduced themselves to the HIBC.

Subica said they go out to do recordation. They document and record any damages upon the land, burial grounds, heiau and ocean. On May 1, 2006 at 6:30 or 7:00 in the morning, they surveyed the area known as the "road to the sea", Kohanaiki Road. Along the trail they found many stone pilings, many that were not recorded or flagged off. The ones that were not flagged off were more inland than the ones that were. Subica said they found remains in some of the caves. They do not enter the caves; they just look with their flashlights.

Keana'aina asked if there were more than six burials.

Subica said a lot more. In certain areas the pilings were 6 to 10 feet apart from each other so she does not recommend bulldozers being allowed on the property. It is hard to define the separation of these boundaries of these burials. You keep seeing more and more. You can't define the buffer zones. They have been there a few times already, and the more they go, the more they find. The main area of the project area has many issues that are yet to be discovered.

Saffrey asked if they had the maps from the BTP when they did their site visit.

Subica said they had other maps and their notes.

Saffrey asked if they could transfer their information onto the maps in the BTP.

Subica said it is possible. They took GPS coordinates and were in there for days and hours pinpointing everything. They are still working on putting it all together.

Nazara asked if they marked everything already.

Subica said they want to go back in and finish. The videotaped and photographed.

Nazara asked Subica to describe the sites.

Subica said there are some that are small and some that are large. There are some that were removed. An oval, tear dropped shape. There were some similar ones and some different ones.

Nazara asked based on their knowledge can they say for sure those are burials.

Subica said yes.

Young asked how many more burials are there in addition to the six shown in the BTP.

Subica answered 50-100 more. That is only covering the three major kuleana. This is just in Kohanaiki.

Elarionoff asked what training, what background do Subica and Kamaka have for what they are doing.

Subica asked Elarionoff to clarify what he is asking.

Elarionoff asked what qualifies Subica and Kamaka to differentiate between a stone feature that is a grave versus an agricultural feature.

Subica answered na'au. When they approached these areas there is a feeling that comes upon you. If you have koko you would sense these kind of things. We are spiritually connected with our 'aina and iwi kupuna. By looking at it, the shape and structure of it and the size of it. There are little ones and big ones and there are medium size ones.

Kamaka said she learned these things from her kupuna. When she sees the sites, she knows it based on her kupuna telling her where there are burials in different ahupua'a. Any books or papers that come out, she reads them and puts the descriptions together. They saw the markers out there and know the colors and what they mean.

Elarionoff asked if the markers are the ones the other guys left.

Kamaka said yes.

Elarionoff asked if they have formal training.

Kamaka said they learn as they go.

Young asked Lindsey if the 45 day clock will continue to run.

Lindsey said yes. As far as the information that was presented, the Department does have an interest in reviewing it.

Young said 50-100 undocumented burials concern him. The Council needs to have full disclosure of all the information before making a decision. We need to have that information before the next meeting.

Lindsey said the issue seems to be the adequacy of the inventory survey and whether we have undocumented or misidentified sites. The Department has approved the inventory survey for this property. The Department would like to review the information Subica and Kamaka are referring to.

Young asked who will review that information.

Lindsey said initially him, but it could end up at a higher level.

Hanoa said the Hawaiians have cemeteries all over. It is the Department's job to follow up on what Subica and Kamaka are reporting. Hanoa knows there are iwi all over. If they can't dig, they put them in the cave. If the ground is soft, they put them in the ground. That is the tradition.

Ron Dela Cruz (Dela Cruz) said earlier Subica mentioned they saw iwi in the sites that are not in the BTP. Dela Cruz asked if those are included in the 50-100 estimate Subica provided.

Subica said yes.

Kuali'i said it would be helpful to share their information with the SHPD. Some of the sites may be in the process of being documented, some may not have been.

Arthur Mahi (Mahi) said there are many burials and heiau in this area. Mahi said he has family burials in Kohanaiki, Kaloko and Honokohau. The burials should stay where they are with a buffer zone.

Kahakalau asked Mahi if he thinks there are more than the seven burials that are in the BTP.

Mahi said plenty more.

Kahakalau asked Mahi if there is more than the one heiau that is in the BTP.

Mahi said plenty more. Once the bulldozers come in it is too late. That is when you get plenty inadvertents, and that is not a word that is good for our culture. If we aren't sure who is there, we need to walk the land first. These things were there before his time and they are still there now.

Curtis Tyler (Tyler) said he has had a chance to visit portions of the property with State agencies and has met with families who have presented new information. Tyler said he will be submitting a cultural descendantcy claim. Tyler observed many things on the property.

Tyler acknowledged and thanked Wolforth for providing a copy of the BTP and for contacting him by telephone to notify him about today's meeting. Tyler discussed the revisions to the BTP with Wolforth and also had a discussion with Kay.

Tyler referred to page 26 of the BTP which addresses inadvertent discoveries. The BTP mentions that in the event of an inadvertent discovery, the HIBC will be consulted. Kahu Norman Keana'aina is also listed. There should be consultations with all of the 'ohana. Tyler said that Kay has mentioned the significance of every iwi and Kaloko Heights Associates strong desire and intent to preserve them in place whenever feasible. Tyler finds this to be a very positive statement and thanked Wolforth and Kay for that.

There is a very specific statement within the BTP that Kay confirmed with Tyler in a meeting they recently had. Each burial feature is going to be subdivided out as a separate lot. This will not be a burial easement in someone's backyard, the burial will be in it's own lot. Tyler finds this unique and a very positive step in breaking new ground. Tyler hopes others will take this as an example.

Tyler said the simple solution to the debate over rock walls or ti leaf is to build the rock walls because that is what the people of this 'aina did. Look at the Kohanaiki Homesteads, there are walls everywhere. Tyler feels it is entirely appropriate to have dry stacked walls. The families should be consulted on how the areas within the walls should be landscaped.

Tyler asked Lindsey if the 45 day clock for the HIBC to make a determination starts today because the HIBC received the revised BTP today.

Lindsey agreed.

Tyler asked if the BTP is revised again next month, will the 45 day clock start again.

Lindsey said he is not sure.

Tyler said it should because it started again upon receipt of the current revised plan.

Lindsey said the clock never started in March and April because it was on the HIBC agenda for information only.

Tyler said that he does not think the BTP is ready for HIBC approval today. It may or may not be ready in 45 days. Previous testifiers have spoken of additional iwi they have seen. Tyler cannot confirm that and does not have that expertise. Tyler did not go there looking for iwi. There needs to be coordination in the effort to review the information indicating there are 50-100 additional burials.

Tyler also received a report that in one or two instances burials were removed. Tyler is not sure if these are the iwi Barrera removed. Someone told Tyler that these were recent removals. Tyler has no knowledge of this. Tyler had the opportunity to see the mea kanu that are there, in particular the alahe'e and lama. These were the largest trees of this type he has ever seen. They are part of the cultural landscape.

What you see when you get a BTP is a two dimensional depiction of what an individual(s) have found when they went on the land. What you can't see, unless you have been there is what the setting for these burials is including their proximity to other cultural resources. What you cannot see in the BTP is what the cultural landscape for these burials will be after the grading has taken place. In a separate project, Tyler's kupuna were at the ground level. When construction was finished they were 30 feet down with walls all around. Tyler does not know what is going to

happen here, but the slope of the ground is not flat. The HIBC can request the inventory survey for the property and grading and construction plans. It is Tyler's understanding from Kay that such plans are not available. The HAR specifically state the HIBC can request this information during the review of a BTP. If you do not have those plans, you have no idea of what might be. Tyler is not suggesting someone is going to desecrate the burials. There is more to this than a two dimensional plan, and Tyler thinks the HIBC needs more information on this.

If there are any native mea kanu on these burial lots, they need to stay. Tyler said there must be monitors and no blasting. If there is going to be alternation of the cultural landscape, the 'ohana must be consulted. The entire cave must be treated as the burial feature.

Tyler said the reference in the BTP that some lots may contain burial easements needs to be revised because these burials are going to be on their own lots. The most important thing that can happen is that the project is designed around the traditional and cultural properties. This has been a problem that has been around for decades. If we can look at it from a different perspective, maybe there will not be the problems that occurred in the past. There should be a 100 foot buffer around the heiau. The interim buffers need to be much larger. The impacts to very significant traditional and cultural properties cannot be determined because there is insufficient information available regarding grading and construction plans. That information needs to be requested along with the archaeological inventory survey. There are lots of people in this community who are related to this area who have not come forward.

Ron Dela Cruz, Ku Kahakalau and Pele Hanoa left the meeting at 2:43 p.m. Quorum is maintained.

McDonald referred to a map on page 4 of the BTP depicting the Kohanaiki Homesteads. McDonald said Kapa is her tutu and Ha'au is her great-great grandfather. Kapa is two generations before Ha'au. McDonald said she is also related to Kaiakoili.

McDonald asked if the burials will be on their own lots with the buffer zone. They appear to take up a large area.

McDonald referred to page 5 of the BTP. There is reference to a jeep road between 1924 and 1959. There were no jeeps in 1924. It would be closer to 1942.

McDonald referred to Site 10736, a heiau. McDonald advised that we do not know what the purpose of this heiau was. McDonald would like it to remain a pailina.

McDonald said there was earlier testimony that Mahealani Pai wants to be involved with cultural protocol.

Wolforth said that is what Pai said on the phone.

McDonald asked why.

Wolforth said he does not know, he does not ask questions like that.

McDonald asked what is his connection.

Wolforth said he did not know.

McDonald said the descendants must be consulted first.

John Roberts (Roberts) said he represents Kahu o Kahiko. Roberts said he is a lineal descendant, and does not recognize the State needing his information because he becomes a lineal descendant automatically to the lands of Kamanawa.

Roberts questioned the jurisdiction of the HIBC and whether the HIBC can make any decisions in regards to the iwi in these areas.

Roberts asked if §13-300-33(a)(1)(A) of the HAR pertaining to a good faith effort to identify lineal and cultural descendants means a complete title search or just for the descendants of the area. If you are doing a total search, the HIBC should be well aware who owns these lands and why aren't there any conveyance records on these lands that were sold. Roberts could not find any conveyance records that these lineal descendants sold these lands to the people that own it today. Roberts said Kaloko Heights Associates don't have the right to come in and develop.

Young asked if there is a hole in the title.

Roberts said there is a hole in the title. Clearly.

Young asked if hole in the title refers back to the land court or previous to that.

Roberts said from the mahele we have certain owners like Kaiakoili and others that were conveyed land from him. During the organic act those lands were recorded as being awarded to those families as kuleana lands which were outright fee simple properties. Roberts asked how could they have sold it, where are the conveyances. The question of the BTP has no relevance, because the applicant does not own the land.

Roberts said iwi has been removed. They have evidence. It is recent. There are moss rock all around and fresh rock in between and it is two feet wide and three feet long with all the rocks thrown to the side. You can't see it from the trail. It definitely was a burial site.

The developer does not have a right to be there. If there are no conveyances, how can the HIBC allow the developer to take hold of the area.

Kuali'i said the HIBC does not research landownership.

Roberts said it is required in the rules.

Lindsey said the rules require research and a good faith effort to identify descendants.

Roberts said there are no conveyances.

Kuali'i said this was an issue at the May HIBC meeting. The Deputy Attorney General was going to look into that.

Lindsey said the response is that the HIBC does not determine landownership.

Kuali'i said from his perspective, the HIBC is here to preserve and protect the iwi.

Roberts said you cannot protect something that the applicant does not have title to.

Young said before a BTP reaches the HIBC, the applicant should have clear title to the land. Young said he takes it for granted that title has been cleared at this point. Maybe that is a wrong assumption. The HIBC should not be making decisions that are contrary to the State laws the HIBC has sworn to uphold or the cultural laws we are bound to by our ancestors. We are talking about landownership in the western sense.

Young asked Lindsey if that information can be given to the State for review.

Lindsey said it can be submitted for review.

Saffrey said she appreciates the information Roberts has submitted. Saffrey said she would like a review of the issues Roberts has discussed.

Healani Cahill (Cahill) said she spent two days with Subica and Kamaka in the field. On one of those days, Cahill spent an extensive amount of time in area called Ulimai(?) and documented three open burials there freshly dug out. They have photographs of that for documentation. Cahill asked if the HIBC is aware that these iwi are missing. It is a clear and very blatant thing.

Lindsey said that anyone with information regarding the allegations of State burial law violations should provide him with their contact information and the appropriate persons will contact them. Lindsey advised the HIBC that they should avoid questioning individuals on this matter and that the appropriate State agency will conduct an investigation into these very serious allegations.

Jean Rasor (Rasor) said he can vouch for the qualifications of Subica and Kamaka to identify burial sites. Rasor said he is an archaeologist and worked for Bishop Museum years ago.

Rasor asked Lindsey if the BTP is in compliance with the rules.

Lindsey said it is.

Hauani'o said cultural practitioners should participate in any reinterments. Hauani'o said that cultural practitioners should be allowed to practice at the heiau in the project area. Hauani'o said there are some who are trying to decommission heiau. Hauani'o said cultural practitioners are trying to re-commission every heiau.

Wolforth gave a summary of the history of the archaeological inventory survey process on the project.

Kay said he is not aware of any landownership issues on the property. There are no quiet title actions at this point. The issues that have been brought up are news to him.

Young said he would like to go over the construction buffers, monitors, blasting buffers and inadvertents. Young said what the HIBC heard a couple of months ago was that if additional

burials were found during the construction phase was that they would be treated as previously known and preserved in place. This is not in the BTP.

Kay said the first priority would be preservation in place and that is their intention. Kay was pressed on the question if they would treat them as previously known. The answer to that is no. There are legal definitions that Kay can't speak to.

Young asked about the buffer around the heiau. Should the buffer be a 100 foot permanent buffer or a 150 foot construction buffer. Another issue is sealing the caves.

Kay said their proposal for preservation in place means that nothing within the burial easement will be touched unless the HIBC, the families and the State says so. That may involve walls, landscaping or removing alien species. There may be sloping outside of the easements. The inventory survey happened first, and they did their concept planning around that. They are going to make these subdivided lots, and there are County standards they need to meet. The lots will be turned over to the homeowners association, who will be responsible for their care as detailed in the BTP. The descriptions of the easements will also be recorded.

Hauani'o asked about burial tubes being punctured by equipment. What will those be considered.

Young said inadvertent.

Hauani'o asked if they will be preserved in place.

Young said according to what Kay just said, it will be considered.

Kay said the issue would come back to the HIBC for discussion.

Kuali'i said page 26 of the BTP discusses the procedure that will be followed should there be an inadvertent discovery.

A motion was made to defer agenda item III.B. (Sherlock/Saffrey)

Vote: All in Favor

A motion was made to close agenda item III.B. (Kuali'i/Sherlock)

Vote: All in Favor

**C. BURIAL TREATMENT PLAN FOR FEATURE B OF SIHP SITE 24270
PAHOEHOE 1ST AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND
TMK (3) 7-7-008:029**

Information/Recommendation/Determination: Discussion of the burial treatment plan. HIBC determination to preserve in place or relocate the burial within Site 24270, located on the subject property. HIBC recommendations to the Department on the short and long term preservation measures detailed in the burial treatment plan.

Robert Rechtman (Rechtman) gave an overview. Rechtman is here today with the landowner Melitta Hodson (Hodson). Rechtman made an informational presentation at the May 2006 HIBC meeting. There have not been many changes. There have been a few minor revisions.

This is a 15 acre parcel. The landowner hopes to make a three acre botanical garden on the mauka portion of the property. The lower 12 acres will be residential. That will involve rezoning and subdivision in the future. An inventory survey was completed and approved. Seven sites will be preserved, one of which is a burial. There are also walls, a trail segment and a residential platform.

The plan is to preserve the burial and all the other features of the site in place. There will be a buffer of 20 feet on one side, 50 feet on another and 100 feet on the northern and eastern sides of the burial feature.

Rechtman said four people were consulted in the development of the BTP.

No construction activity will be allowed within the preservation buffers. Invasive vegetation will be removed. There will also be a preservation plan addressing the non-burial preservation features. There could be concerns regarding construction of a rock wall around the burial because it falls within a larger preservation area.

The proposed language for signs is detailed on page 11 of the BTP. Access to the site for identified lineal and cultural descendants will be provided and recorded with the property. The interim protection measures will include the erection of orange construction fencing along the permanent buffer during any construction excavations. The project archaeologist will also meet with construction personnel prior to the work beginning. There is no provision for archaeological monitoring.

Young asked if there is subdivision approval.

Hodson said they originally applied two years ago with a tentative plan. They withdrew that application until the County's plans for the La'aloa Extension are completed. The plans for the property are fluid.

Young said there were comments early about coming to the HIBC when a landowner does not have subdivision approval, because the HIBC is looking at things that are proposed as opposed to in place. The plans can change from what is being proposed today.

Rechtman said the development plans could change, but the proposals for preservation will remain.

Elarionoff asked about landscaping.

Hodson said she is not sure. It will be something beautiful.

Tyler said he made several recommendations for revisions to the BTP at the May meeting and is unaware if those have been incorporated into the plan. Tyler hopes the recommendations will be in a revised BTP. The development concepts could change and that makes sense given some of the information presented.

Tyler said there must be cultural monitoring. Tyler said he will be submitting a request for cultural descendancy to this property. Tyler said his fourth great-grandfather had a substantial amount of land in Pahoehoe 3rd, which he received in 1894 and testified before the Boundary Commission in 1873 and said he was the konohiki for that area.

Kuali'i asked Tyler about his suggested revisions to the BTP. Kuali'i asked if they are in the May 2006 HIBC meeting minutes.

Tyler said they are and he will work with Rechtman on them as well.

Hauani'o asked how much of the property is going to the La'aloa Extension and the park.

Young said the road is on another lot. They were talking about how the La'aloa Extension will extend up to Kuakini and will parallel to this project.

Young asked if this was BTP is on the agenda for a determination for the first time.

Lindsey said yes.

Young said he has a concern regarding the lack of subdivision approval. Young said he has no problem with preservation in place and the buffers. The concept is good. Young would like this to come back to the HIBC one more time, just so the HIBC can see this in it's final development concept.

Kuali'i said the suggested revisions should also be in a revised BTP. A cultural monitor should be addressed.

A motion is made to preserve in place the burial within Site 24270 located on TMK (3)7-7-008:029. (Harris/Sherlock)

Vote: All in Favor

Young asked Lindsey if recommendations on the details of the BTP can be deferred to the next meeting.

Lindsey said the Department is now within a 90 day time period to approve all the details of preservation in place. Once the Department receives the final plans, they can be presented to the HIBC for review and recommendations.

Tyler said the preservation in place is finished, but asked if a revised BTP incorporating the recommendations will still come back to the HIBC.

Young said it will.

A motion was made to close agenda item III.C. (Harris/Saffrey)

Vote: All in Favor

**D. SITE 2383, PAO'O AHUPUA'A, NORTH KOHALA DISTRICT, HAWAI'I ISLAND
TMK (3) 5-7-001:005**

Information/Recommendation: Discussion and testimony of the history of Site 2383. HIBC recommendation to the Department whether to recognize Site 2383 as a burial site. HIBC recommendations to the Department on any short and long term protective measures.

Lindsey said after receiving testimony and reviewing the history of this matter, the HIBC voted to recognize Site 2383 as a burial at the May 2006 HIBC meeting. Following a review by the Department and advise for the Attorney General's office, the Department has determined that technically the motion should have been a recommendation to the Department to recognize Site 2383 as a burial because ultimately the Department will make that final determination. The matter is now back on the agenda for the HIBC to consider another motion. Lindsey said there are also people here today to provide testimony.

Young said it is a recommendation from the HIBC to the Department that the Site should be recognized as a burial.

Lindsey said yes. The original BTP submitted to the HIBC in 2003 was included in the mail out for the meeting.

Mike Issacs (Issacs) said the minutes from the May meeting need to be corrected. The Luhiau family never had land in Pao'o, they had lands adjacent to Pao'o and those lands of all been sold. The Luhiau Family does not have land in this area, they had land.

Elarionoff said Issacs is talking about testimony given by somebody else. Elarionoff does not have the right to change the minutes, but can testify that they minutes are incorrect.

Issacs said the DLNR-Office of Coastal and Conservation Lands recommended denial of the CDUA for this property. A contested case hearing was asked for. Issacs said they went to the DLNR meeting on O'ahu and testified. Two groups have filed for a contested case hearing.

Issacs asked who the lineal descendants of record are for Pao'o, North Kohala.

Lindsey said there are no lineal descendants formally recognized by the State.

Stephanie N. Naihe Laxton introduced herself to the HIBC. Laxton is the President and Founder of Maika'i Kamakani o Kohala, Inc. They are a non-profit corporation and their mission statement is responsibility and accountability for Native Hawaiian (?) (inaudible) and preservation of Native Hawai'i. Laxton said she is here today because in 1999 they came together as a community to discuss historic findings in Kohala. They started the Kohala Historical Preservation Committee in 2000. Laxton descends from the Keaweaheulu line through Naihe. Laxton said Keaweaheulu was an advisor to Kamehameha the Great and his son, Naihe was the orator. Laxton said her family received land grants from before the mahele. They have maps to show this.

Laxton said the Naihe Family is well known in the history of Hawai'i. Laxton knows that Kauwe was a very prominent man, an ali'i.

Laxton introduced Fred I. Kauwe (Kauwe). Laxton said he is the lineal descendant to the Kauwe grave in Pao'o.

Kauwe introduced himself to the HIBC. Kauwe said it is not right to put a house where the cemetery is. There should not be houses by the grave.

Young asked Laxton and Kauwe if they were consulted for the original BTP in May 2003.

Laxton said no.

Young said the HIBC has agreed with the testimony indicating Site 2383 is a grave and will recommend that to the Department. Young asked Laxton if she has any thoughts in that regard.

Laxton said by putting a house near the grave of an ali'i, you change the mana or the aura of the area. The mana comes from the wind, the house will change those wind patterns. The ali'i is watching over what he has left.

William Akau (Akau) said they don't want a house built in this area. Kauwe was a great chief. We need to protect this special place.

Saffrey asked Lindsey about lineal descendants. Saffrey said earlier Lindsey said there are none.

Lindsey said at this point there are no formally recognized lineal descendants, but it sounds like Fred Kauwe may be submitting a claim. That will be his choice.

Saffrey said the first step is for the HIBC to make the correct motion recommending to the State that the Site 2383 be recognized as a burial. Saffrey asked at what point should Kauwe file for lineal descent recognition.

Lindsey said it is up to Kauwe to decide whether to formally apply.

Saffrey said that in order to move forward with what they want to protect, they need to follow the process.

Lindsey said he can help with the process, but it is Kauwe's decision.

David Frankle (Frankle) introduced himself to the HIBC. Frankle said he is an attorney with Native Hawaiian Legal Corporation who represents Maika'i Kamakani o Kohala. The HIBC will have to look at the whole BTP because the original document did not have complete information. A map that clearly showed the Kauwe grave was overlooked. The HIBC needs to decide what kind of protection needs to be afforded.

Harris asked Kauwe how long he has known the burial was there and that it was his great-great grandfather.

Kauwe said they knew it was a family burial and they don't get there as often as they would like to. Kauwe said he lives in Oceanview now and works at the Four Seasons.

Harris asked Kauwe if they still visit from time to time.

Kauwe said when he was living in Kohala, they went more often.

Young asked Lindsey what will happen relative to the development of a BTP.

Lindsey said the matter will be reviewed internally and if the Department accepts the written and oral testimony and recognizes the site as a burial a new BTP will be required. The information indicating a lineal claim is pending may be a critical component to this determination should the family choose to submit a claim.

Randy Vitousek (Vitousek) said he represents the landowner, Jonathan Cohen who is very concerned that his home be built in a manner that is right. If this site is a burial it should be treated in an appropriate manner as with the other burials. Vitousek said he has no objections to recognizing the site as a burial.

A motion was made to recommend to the Department that Site 2383 be recognized as a burial. (Elarionoff/Sherlock)

Vote: All in Favor

A motion was made to close agenda item III.D. (Saffrey/Elarionoff)

Vote: All in Favor

E. DISCUSSION OF FUNDING FOR ISLAND BURIAL COUNCILS

Information/Recommendation: Discussion of the funding and support currently provided for Island Burial Councils. Recommendation regarding funding for Island Burial Councils.

Lindsey said Saffrey had submitted an April 19, 2006 letter regarding this matter which was deferred at the April meeting.

Young said he spoke with SHPD Administrator Melanie Chinen about this. The HIBC has no distinct budget. If the HIBC wants their own budget/funding, the IBC's need to put forth a proposal. The SHPD has a budget. If the HIBC wants more funding for the SHPD, it needs to be taken up with the legislature.

Saffrey said there should be an accounting of money assessed against developers. The IBCs have a right to know this. The IBCs need to meet once or twice a year to make sure we are all on the same page.

Young said it takes getting a package together for the legislature.

Saffrey said the fines are being derived from the bones. IBCs have a right to know where that money is going.

Elarionoff said the message needs to be provided to the people that make the budget.

Saffrey said the SHPD is understaffed and is unable to provide the things the HIBC needs to make decisions.

Elarionoff said the Governor needs to be advised of what IBCs need. The accounting of fines assessed should be public record.

Saffrey said when David Brown, the SHPD Archaeology Branch Chief was at the HIBC meeting in February, even he said the SHPD needs more money and is asking for it.

Young said this needs to be a coordinated effort and the IBCs should expect to be at the legislature when it opens next year.

Lindsey said on this island, there has only been one case he can recall in four years where a fine was levied.

Saffrey said there should still be an accounting.

Lindsey said the HIBC should always request any information they need to make decisions. It is the same thing with the public, people should never hesitate to bring matters to the SHPD's attention. Being short staffed or overworked is not an excuse. Lindsey said there has been some progress. The SHPD has added a cultural person on Maui, which was lacking for many years. The next step may be to add someone on Kaua'i, the people there need someone. O'ahu is staffed already.

Saffrey said the request needs to be molded in terms of what the IBCs need.

A motion was made to defer agenda item III.E. (Harris/Kuali'i)

Vote: All in Favor

IV. CASE UPDATES

A. UNIVERSITY OF PENNSYLVANIA NAGPRA REPATRIATION

Information: Update on the status of the return of a iwi po'o from the University of Pennsylvania.

Lindsey said the iwi po'o has come to Hawai'i Island and is in temporary curation at Pu'u honua o Honaunau. The NAGPRA process is on-going. The matter should be back on the agenda in June.

V. INADVERTENT DISCOVERIES

Information/Recommendation: Informational presentation by SHPD staff on inadvertent discoveries of skeletal remains reported to the Department in the months of April and March 2006 on the following properties.

A. 'AUHAUKEA'E AND PUA'A AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND TMK (3) 7-5-009. Summary by SHPD staff for human remains inadvertently discovered during the Kuakini Highway 16 inch Waterline Improvement Project

Lindsey said additional iwi were discovered during the project in April.

B. KAHUA AND WAIKA AHUPUA'A, NORTH KOHALA DISTRICT, HAWAI'I ISLAND TMK (3) 5-9-001:007. Inadvertent discovery of human remains reported during archaeological data recovery within Site 16128.

Lindsey said archaeologists conducting data recovery identified a burial. Preliminary information indicates it can be preserved in place, but no formal decision has been made yet.

VI. ANNOUNCEMENTS

Brenda Ford (Ford) said the County is considering revisions to the subdivision code via Bill #246. Ford said these are terrible changes and the County needs to hear from Hawaiians because there are very few involved.

VII. ADJOURNMENT

A motion was made to adjourn the May 2006 HIBC meeting. (Saffrey/Sherlock)

Vote: All in Favor

The May 2006 HIBC meeting was adjourned at 6:04 pm.